

1 read, correct?

2 A. Yes.

3 Q. In the first paragraph in that letter you
4 talk about the fact that you have removed the Ten
5 Commandments, those book covers or posters that were
6 in your classroom, correct?

7 A. Is that what it says there?

8 Q. Yeah, I'm asking you --

9 A. Yes.

10 Q. Okay. And in there you actually state
11 that you understand that the courts have ruled that
12 you're not allowed to put those kinds of things in
13 your classroom. Do you see that?

14 A. Yes, sir.

15 Q. And about the middle, halfway down that
16 statement there's the paragraph that begins "In
17 addition." Do you see that?

18 A. Yes, I do.

19 Q. And that's where you talk about the
20 superiors having ordered you to remove the Bible from
21 your desk. Do you see that?

22 A. Yes, sir.

23 Q. Okay. And you go on in that paragraph to
24 say that it's not your intention to remove the Bible

1 from your desk.

2 A. Where is that at, sir?

3 Q. In that same paragraph.

4 A. Oh, okay.

5 Okay. Can you repeat that question, sir?

6 MR. MANSFIELD: Could you read that back,
7 please.

8 (Record read.)

9 A. What was the question on that?

10 Q. "Is that correct?"

11 A. Is that what it says here?

12 Q. Well, let me ask you -- I know it says
13 that here, right?

14 A. I'm sorry. I apologize. I want to hear
15 what she says again.

16 Q. Let me ask it a different way. In this
17 middle paragraph you're stating that you don't agree
18 that you should have to remove the Bible from your
19 desk, correct?

20 A. Yeah. Like I said, I didn't write this
21 up, so --

22 Q. Well, let me ask you, did you agree with
23 that, that you -- was that your belief at the time,
24 that you should not have to remove your Bible from

1 your desk?

2 A. Yes.

3 Q. So you agreed with this paragraph, that
4 you should not have to remove your Bible from the
5 desk.

6 A. Yeah. From what the paragraph is saying,
7 yes.

8 Q. But that was your belief at the time,
9 correct?

10 A. To not remove the Bible from the desk.

11 Q. Correct.

12 A. Yes.

13 Q. And that's your belief today I assume.

14 A. Yes.

15 Q. Through today you still maintain that you
16 should be allowed to have your personal Bible on your
17 desk in the public school classroom.

18 A. That would be correct.

19 Q. Okay. And you believe that removing the
20 Bible, your personal Bible from your desk in your
21 classroom would be an infringement on your own deeply
22 held personal religious beliefs granted by God and
23 guaranteed under the free exercise clause of the
24 First Amendment to the United States Constitution; is

1 that correct?

2 A. Yes.

3 Q. And that's a right that you believe you
4 have under the Constitution, correct?

5 A. Yes.

6 Q. And the students in your classroom have
7 rights too, don't they?

8 A. Absolutely.

9 Q. And they have the right that a public
10 school teacher shouldn't be teaching religion to
11 them, correct?

12 A. That's correct.

13 Q. And as a teacher you have an obligation
14 to those students through your teaching not to
15 infringe on their rights, correct?

16 A. Yes.

17 Q. Okay. Do you think, I don't know whether
18 you have any -- are there any Muslim teachers in the
19 Mount Vernon City School District?

20 A. I don't know, sir.

21 Q. If there were a Muslim teacher, do you
22 think that teacher should be able to place the Koran
23 on their desk?

24 A. You would have to ask that Muslim

1 teacher, sir.

2 Q. I'm asking you, what's your personal
3 opinion about that?

4 MR. HAMILTON: Objection as to whether or
5 not it calls for any legal speculation, but answer if
6 you can.

7 A. Can you repeat the question?

8 Q. Tell me your personal belief, do you
9 believe a Muslim teacher should be able to have a
10 Koran on their desk in the public school classroom?

11 THE WITNESS: I'm confused here. That
12 means I can answer it?

13 Q. Yes.

14 MR. HAMILTON: Yes, sir.

15 A. Yeah, I'll say --

16 THE REPORTER: I'm sorry. I didn't hear
17 your answer.

18 THE WITNESS: Do me a favor, repeat that
19 one more time, will you, because I just want to make
20 sure. I wasn't quite sure if I could . . .

21 (Record read.)

22 A. Yes.

23 Q. Now, there was another meeting on April
24 21st. Do you recall that meeting?

1 A. You'll have to refresh me on that one,
2 sir.

3 Q. Following the rally in the Square do you
4 recall there being another meeting with school
5 administrators about removing the Bible from your
6 desk?

7 A. I do not remember that meeting.

8 Q. You don't remember an April 21st
9 meeting?

10 A. No. I just -- you're going to have to
11 give me some more info on that, sir.

12 Q. All right. We'll get back to that.
13 During the remainder of the school year following
14 April 16th, remainder of that 2007-2008 school
15 year, did you always keep your Bible on your desk?

16 A. After April 16th?

17 Q. Yes.

18 A. To the end of the year?

19 Q. Yes.

20 A. Yes.

21 Q. So you never complied with Mr. White's
22 order to remove the Bible from your desk.

23 A. That is correct.

24 Q. Okay. But I think you already told me

1 this, that you did comply with the order to remove
2 the FCA Bibles, correct?

3 A. Yes.

4 Q. And you removed -- you complied with the
5 orders to remove the religious displays that were in
6 the classroom; is that correct?

7 A. You just put another word in there;
8 "displays." I didn't display anything, sir.

9 Q. Okay. The religious -- or, the Ten
10 Commandments book covers. You complied with the
11 order to remove the Ten Commandments book covers from
12 your room.

13 A. Yes.

14 Q. Okay. Was there another Bible that you
15 had in your classroom on the lab table at some point
16 during the '07-'08 school year?

17 A. Yes.

18 Q. What was that Bible?

19 A. That was the school's Bible.

20 Q. And that's a Bible that you had checked
21 out from the school library?

22 A. That would be correct.

23 Q. And you checked that out after these
24 meetings you had with Mr. Short about -- or Mr. White

1 about removing your personal Bible, correct?

2 A. So you're saying after April 16th?

3 Q. Correct.

4 A. Yes.

5 Q. And you put that Bible on your lab table
6 to make a statement, didn't you?

7 A. No. No, I did not.

8 Q. Why did you put that -- why did you check
9 that Bible out of the school library and put it on
10 your lab table?

11 A. Well, it was real simple, I figure
12 they're going to take this one off, and I was going
13 to put that one on, because I figured they would not
14 take the school Bible off.

15 MR. MANSFIELD: Mark that as wherever we
16 are. No. 4.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. Mr. Freshwater, I'm handing you what's
19 been marked as Deposition Exhibit No. 4, it's
20 actually two pages there. Exhibit 4 are some
21 pictures of what appear to be materials in your
22 classroom; is that right?

23 A. The top one. Can you -- repeat that one,
24 please.

1 Q. Tell me what the top one is. Is that a
2 picture in your classroom?

3 A. That is correct.

4 Q. And that's the Bible there, that book we
5 see right on the top.

6 A. That's correct.

7 Q. That, in fact, is the same Bible you have
8 here today it looks like.

9 A. That's right.

10 Q. And there are several books underneath
11 that Bible. Do you know what those books are?

12 A. I don't remember what those books are,
13 sir.

14 Q. You say you don't remember?

15 A. I don't remember, sir.

16 Q. Okay. Where is this picture taken? Is
17 this the corner of your desk?

18 A. Yes, that would be correct.

19 Q. Do you know who took these pictures?

20 A. I have no idea, sir.

21 Q. Is this where, this position where your
22 Bible is here on this first page of Exhibit 4, is
23 that where you always kept your Bible on your desk?

24 A. Always? You used the word "always"

1 there. Can you repeat that again?

2 Q. Yes, I used the word "always."

3 A. That's what I thought you said. I can't
4 go with that statement, always, no.

5 Q. Where we see this Bible in the picture on
6 Exhibit 4, that's the location where you typically
7 kept the Bible on your desk?

8 A. I would accept "typical," yes.

9 Q. As we're looking at this picture we see
10 the back of what looks to be a VCR. Is that what
11 that is?

12 A. That is correct.

13 Q. And as we're looking in that direction
14 from the front of the Bible towards the VCR, what
15 direction is that in the classroom?

16 A. That would be north.

17 Q. Is that towards the students?

18 A. No, that would be at about a 95-degree
19 angle away from the students.

20 Q. Looking at Exhibit 4, where are the
21 students? Are they to the right?

22 A. They would be to the right, yes.

23 Q. Okay. And your desk chair I assume is to
24 the bottom on this picture.

1 A. It would be to the left.

2 Q. To the left?

3 A. Yes.

4 Q. Okay. So as we see the desk here in
5 front of the VCR, the desk extends perpendicular to
6 the VCR and away from the VCR; is that right?

7 A. That would be correct.

8 Q. Okay.

9 A. Well, it extends this way.

10 Q. This way, correct?

11 A. Yes.

12 Q. Perpendicular to the VCR.

13 A. Yes.

14 Q. And the students are out here to the
15 right.

16 A. Yes.

17 Q. And so the Bible here is right at the
18 front of your desk in terms of its orientation
19 towards the students.

20 A. In this picture, yes.

21 Q. Right. If you look at page 2 of Exhibit
22 4, that appears to be another picture of your Bible;
23 is that correct? I know it's hard to see.

24 A. It's black and white there. It could be

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1 a different book there. I'm not sure, sir. It could
2 be the one underneath, I don't know.

3 Q. Did you also have a couple of the Chicken
4 Soup for the Teenage Soul books in your classroom?

5 A. I don't remember. I don't remember, sir.

6 Q. Do you recall having those books at one
7 point in time?

8 A. I don't remember, sir.

9 Q. Do you recall reading passages from those
10 books, from the Chicken Soup for the Teenage Soul, to
11 your students?

12 A. To my students?

13 Q. Yeah.

14 A. I don't remember, sir.

15 Q. If a student would testify that you had
16 done that in the past, do you have any reason to
17 dispute that?

18 MR. DESCHLER: Can you identify the past,
19 the timing on that?

20 Q. If a student had testified, any student
21 had testified that you had read excerpts from Chicken
22 Soup for the Teenage Soul to them, to the class, do
23 you have any reason to dispute that?

24 A. I guess not. I wouldn't have reason to

1 dispute that.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. Mr. Freshwater, let me hand you what
4 we've marked as Deposition Exhibit 5 which also
5 contains two pages. The top page of Exhibit 5, are
6 these the Ten Commandments book covers that you were
7 referring to before?

8 A. I'm sorry, I just got distracted by that.
9 Go ahead, sir.

10 THE WITNESS: Can you repeat, please?

11 (Record read.)

12 A. Yes, these would be the book covers, the
13 security -- blocking the security window, yes, the
14 window.

15 Q. All right. There's a "215" there in the
16 middle, that middle book cover; do you see that?

17 A. Yes.

18 Q. Do you know what that is?

19 A. That would be my room number.

20 Q. Okay. So that room number appears on the
21 glass?

22 A. That is correct.

23 Q. So these pictures are actually posted on
24 the outside, or let me ask, is this picture taken

1 from the inside or outside of your classroom?

2 A. Unless the pictures have been inverted
3 this would be, yeah, if it's transposed -- yes, this
4 would be outside.

5 Q. Outside your classroom.

6 A. Yes.

7 Q. And so these posters would have been
8 visible out into the hallway; is that what you're
9 telling me?

10 A. Yeah, they would be visible outside,
11 yeah, out in the hallway. Yes.

12 Q. And they were also, the Ten Commandments
13 language also appeared on the reverse side of these
14 book covers, correct?

15 A. No, that's not correct.

16 Q. Okay. Was there anything visible on the
17 opposite side of these Ten Commandments book covers
18 inside your classroom?

19 A. I'm just trying to read it here because
20 it's been awhile since -- what's it say? "Good
21 Thinking" I think it says there, sir.

22 Q. I'm talking about on the flip side.

23 A. That would be the reverse side, "Good
24 Thinking."

1 Q. I see. So on the reverse side of this
2 center one that says "Good Thinking" we would see the
3 Ten Commandments language inside your classroom.

4 A. Yeah. I could say yes to that. Yes.

5 Q. And so the flip side of these other two,
6 the top and the bottom Ten Commandments book covers,
7 what we would see if they weren't covered with
8 something else inside your classroom would be the
9 "Good Thinking" side.

10 A. Yes.

11 Q. Okay. If you look at page 2 of Exhibit
12 5, this is another list of the Ten Commandments,
13 correct, among other things that appear in this
14 picture?

15 A. Yes.

16 Q. And is this the Ten Commandments poster
17 that we talked about before that was on your bulletin
18 board?

19 A. This one?

20 Q. Yes.

21 A. No.

22 Q. Is it?

23 A. I'm sorry, I thought you heard me. No.

24 Q. No? Okay. Where was this one located in

1 your classroom?

2 A. This looks like on my chalkboard.

3 Q. And this Ten Commandments, I'll call it a
4 poster, I know it's not that big, but that was there
5 during the 2007-2008 school year?

6 A. When was this picture taken?

7 Q. Well, we're going to get testimony about
8 that I think from somebody at the school district,
9 but I'm assuming it was taken April 2008.

10 A. Okay.

11 Q. You don't have any reason -- to the best
12 of your recollection, this poster was up in your
13 classroom during the 2007-2008 school year.

14 A. My best recollection, yes.

15 Q. Okay. So there actually were three Ten
16 Commandments book covers/posters in your classroom,
17 correct, the ones on the windows near your door, this
18 one on your chalkboard, and then the one we talked
19 about on the bulletin board, correct?

20 A. Yes.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. Mr. Freshwater, let me hand you what we
23 marked as Exhibit 6. Can you identify this picture
24 for me? I mean, what it's a picture of?

1 A. This would be a picture in my room behind
2 my desk.

3 Q. Okay. This is the bulletin board we
4 talked about before?

5 A. Yes, it is.

6 Q. And then at the bottom of this picture we
7 see that Ten Commandments book cover we talked about
8 before, correct?

9 A. That is correct, sir.

10 Q. Okay. And then above that is the
11 patriotic poster that you referred to?

12 A. That would be correct.

13 Q. And that patriotic poster is a picture
14 of, it looks like Colin Powell and President Bush and
15 some others, his cabinet members.

16 A. Yeah, I would assume. I don't know them
17 all, but I would assume, sir.

18 Q. Okay. And there's a religious
19 inscription or saying there at the top of that
20 poster; is that correct?

21 A. Is there a religious saying up -- yes.

22 Q. Do you recall what that said? Part of
23 it's blocked out.

24 A. No, I do not.

1 Q. There's a reference there, a biblical
2 reference on the right-hand top side of the poster;
3 do you see that? I mean, it's referring to a part of
4 the Bible there up in the top right-hand corner.

5 A. Yeah, I see something there, but from the
6 picture I cannot tell, sir.

7 Q. You don't know what that's referring to,
8 what biblical verse --

9 A. No.

10 Q. -- that's referring to?

11 A. No, I don't.

12 Q. Okay. If you look at the top of this
13 picture, there's a Will Graham Celebration poster; do
14 you see that?

15 A. Yes.

16 Q. And you understand Will Graham is Billy
17 Graham's son?

18 A. Yes.

19 Q. And tell me what this poster was about,
20 this Will Graham poster.

21 A. The Celebration of Will Graham 2007.

22 Q. This was a tour that Will Graham was
23 doing around the country; is that right?

24 A. I don't know if it was a -- I don't know

1 if you would consider it a tour.

2 Q. A series of speaking engagements, better
3 to characterize it that way?

4 A. Celebration, more of a -- how can you
5 describe it? Music. A lot of music. It was a lot
6 of music.

7 Q. It was an evangelical event; is that fair
8 to say?

9 A. No, I don't think that would be fair to
10 say.

11 Q. He appeared at Kenyon College.

12 A. That would be correct.

13 Q. And you recall that being in late-2007?

14 A. What is "late"?

15 Q. Well, during the school year in 2007 --
16 in the latter part of 2007, so the first half of the
17 '07-'08 school year, sometime between September and
18 December.

19 A. I'm not sure, sir. I'd have to -- I
20 don't remember exactly.

21 Q. Did you attend the event?

22 A. Did I attend it? Yes.

23 Q. Okay. And just tell me briefly what
24 happened at the event.

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1 A. A lot of music that -- some of it didn't
2 suit my style so I was not in there, okay? It was
3 loud, so I was in and out.

4 Q. And Will Graham spoke?

5 A. Yes, he spoke.

6 Q. Did you hear him speak?

7 A. Bits and pieces, yeah. Like I said, I
8 was in and out.

9 Q. When he spoke, though, there wasn't loud
10 music going on, was there?

11 A. No. No.

12 Q. Okay. Do you know how long he spoke?

13 A. I don't know, sir.

14 Q. Are you telling me you didn't listen to
15 his entire speech? You left? You came and went?

16 A. I was in and out, yeah.

17 Q. So you didn't hear his entire speech.

18 A. No, I did not.

19 Q. Was he delivering a sermon?

20 A. He was speaking, sir.

21 Q. And obviously you put this Will Graham
22 Celebration poster on your bulletin board in your
23 classroom.

24 A. I didn't put it there, sir.

1 Q. Okay. Who put it there?

2 A. I would have to guess on that. I don't
3 know, sir.

4 Q. Well, what's your guess?

5 A. Student from FCA or my daughter. I don't
6 know.

7 Q. Did you take your daughter to the Will
8 Graham event?

9 A. Yeah, she went.

10 Q. And it's your testimony that you did not
11 put this Will Graham poster on your bulletin board.

12 A. I don't remember, sir.

13 Q. Okay. So you don't remember whether you
14 did it or whether somebody else did it, you just
15 don't recall as you sit here today.

16 A. I don't remember, sir.

17 Q. So it might have been you, correct?

18 A. No, it wasn't me.

19 Q. Okay. Well, you just told me you didn't
20 recall whether you did it or not, so --

21 A. I didn't put it up there.

22 Q. Okay. Nonetheless, you allowed it to
23 remain on your bulletin board in your classroom
24 during the 2007-2008 school year, correct?

1 A. It was the FCA room also, sir.

2 Q. Okay. So the answer to my question is
3 "correct."

4 A. You'll have to repeat that question, sir.

5 MR. MANSFIELD: Could you read the
6 question back.

7 (Record read.)

8 A. Yes.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. Handing you what we've marked as Exhibit
11 7.

12 (Discussion off the record.)

13 Q. Mr. Freshwater, we've just handed you
14 what's been marked as Deposition Exhibit 7 and this
15 is also a picture in your classroom; is that correct?

16 A. Yes, it is.

17 Q. And these are some cabinets above a
18 counter in your classroom.

19 A. That would be correct.

20 Q. And on four of those doors there are
21 little posters, correct?

22 A. You called these posters, sir?

23 Q. Well, I don't know. You tell me what
24 they are.

1 A. Motivational.

2 Q. Motivational what?

3 A. Writings. Posters.

4 Q. Is it okay if I refer to them as little
5 posters?

6 A. Yes. Yes.

7 Q. Okay. And each of those is a religious
8 saying, correct?

9 A. No.

10 Q. What are they?

11 A. Motivational sayings.

12 Q. Are there biblical references contained
13 in those?

14 A. I can't tell, sir.

15 Q. Yeah, we can't read them here. We'll
16 figure out what they say later, but do you recall
17 what those were?

18 A. I don't recall, sir.

19 Q. There's writing that appears in a little
20 larger type in the top half of each of these small
21 posters, correct?

22 A. Yes.

23 Q. And that's what you're telling me is a
24 motivational statement?

1 A. The whole thing, sir.

2 Q. At the bottom there's some additional
3 language on each one, correct?

4 A. That would be -- it appears that way,
5 yes.

6 Q. And those were actual biblical verses at
7 the bottom, correct?

8 A. I do not know, sir.

9 Q. You don't recall?

10 A. I don't remember, sir.

11 Q. Do you know what happened to those four
12 posters?

13 A. I can only assume that they were --

14 MR. HAMILTON: Don't assume.

15 A. Okay. They were removed from my room
16 when the stuff out of my room was removed.

17 Q. You removed these four as a result of
18 your conversations with Mr. White about removing
19 religious displays, correct?

20 A. Yes.

21 Q. And so these were four of the items that
22 you had to remove at that time.

23 A. Yes, Mr. White said to. Yes.

24 Q. Right. Okay. So based on that fact that

1 these were items you had to remove, it's fair to
2 assume that there were religious references or
3 citations at the bottom of each of these four
4 posters; wouldn't you agree with me?

5 A. No.

6 Q. When you removed them from these
7 cabinets, where did you put them?

8 A. I don't remember, sir.

9 Q. Did you keep them in your classroom or
10 take them home?

11 A. I don't remember, sir.

12 Q. Do you know whether you have them today?

13 A. I don't know where they're at, sir.

14 Q. Do you recall destroying them?

15 A. Did I destroy them? No. When they -- I
16 can't used the word "assume." When they went through
17 my room, that's when I -- they were probably removed
18 from the -- however they cleaned my room out, sir.

19 Q. Well, you told us that you actually
20 removed these things in response to Mr. White's
21 request, and what I'm trying to find out is did you
22 put them in the cabinets, or did you take them home,
23 or did you throw them away? Do you recall what you
24 did with them?

1 A. I do not remember, sir.

2 Q. How about the Ten Commandments book
3 covers and those other things that we talked about
4 today, do you recall what you did with them? In
5 other words, did you put them inside the cabinets?
6 Did you throw them away? Did you take them home?
7 What do you recall doing with them?

8 A. I don't remember, sir.

9 Q. Do you recall giving them to your
10 attorneys for purposes of production in the lawsuit?

11 A. You'll have to ask him.

12 Q. All right. Were you involved in a school
13 activity or an activity called Cross Club?

14 A. I'm sorry. Could you repeat that?

15 Q. Were you involved in an activity at
16 school, I assume it's at school, but an activity or a
17 group called Cross Club?

18 A. Define "involved." I'm not sure what you
19 mean by that word.

20 Q. What is Cross Club?

21 A. It was FCA.

22 Q. It's the same thing as FCA.

23 A. Yes.

24 Q. Did you have Cross Club posters in your

1 classroom as well?

2 A. I don't remember, sir.

3 Q. There was some testimony from the hearing
4 when you testified in your termination hearing that
5 you had these old Cross Club posters in your
6 classroom. Do you recall that testimony?

7 A. You would have to show that to me, sir.

8 Q. As you sit here today, you can't recall
9 today whether you had these Cross Club posters on
10 your wall or not.

11 A. Yes, that's correct.

12 Q. We talked about you removing these items
13 from your classroom in response to Mr. White's
14 direction and I think you told us before you did not
15 remove your personal Bible on your desk, correct?

16 A. That is correct, sir.

17 Q. And you also actually did not remove this
18 patriotic poster; is that correct?

19 A. Yeah, that is correct, because I was
20 never asked to remove that.

21 Q. And after being told to remove the
22 religious items from your classroom, we talked about
23 you checked out this other Bible from the library,
24 correct?

1 A. Yes.

2 Q. And you also checked out a book called
3 Jesus of Nazareth.

4 A. I don't remember the name of it, sir.

5 Q. Do you recall checking out two books from
6 the library?

7 A. Yes.

8 Q. One was the Oxford Bible.

9 A. Yes.

10 Q. And you don't remember the other book
11 being a book called Jesus of Nazareth.

12 A. I don't remember, sir.

13 Q. That second book was also a religious
14 book, though, you do recall that.

15 A. I'm not -- religious book? I don't know,
16 sir.

17 Q. When you checked the book out of the
18 library, you had to fill out a library card just like
19 every kid would have to do.

20 A. That would be correct.

21 Q. Okay. Do you recall telling anybody that
22 you checked those two books out to make a point with
23 the school?

24 A. Make a point. I think I've already

1 mentioned what the point is.

2 Q. Right. By checking these two books out
3 you were making the point that, I'll characterize it
4 this way and you correct me if I'm wrong, but that
5 you thought it was ridiculous that they were
6 requiring you to remove your personal Bible when you
7 could actually go get these religious books from the
8 library and check them out and keep them in your
9 classroom; is that fair?

10 A. No, that's not fair, sir.

11 Q. You tell me, then, what was the point of
12 checking those two books out from the library?

13 A. I thought I already -- do you want me to
14 repeat what I said, sir?

15 Q. You told me the first book you checked
16 out because you thought your personal Bible was going
17 to be taken away; that was your point with that one.

18 A. Yes.

19 Q. And what was your point with the second
20 book?

21 A. I happened to notice it with that one and
22 I wanted to look at it.

23 Q. So it's your testimony you had no point
24 or motive or intention in checking those books out.

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1 A. No, I didn't have no -- no. Like I say,
2 in case my personal Bible was removed. My daughter,
3 every time she came in, we looked to see if the Bible
4 was removed or not till the end of the year.

5 Q. Was your daughter in your class that
6 year?

7 A. No, sir.

8 Q. But I take it your daughter would come
9 visit you in your classroom at different points
10 during the day.

11 A. Before school, after school.

12 Q. Okay. So when you came to school every
13 day, you would bring your daughter with you.

14 A. That is correct.

15 Q. And so she would come to your classroom
16 first.

17 A. Majority of the time, yes.

18 Q. And then she would go to her homeroom and
19 go about her day?

20 A. That would be correct, yeah.

21 MR. MANSFIELD: Go off the record here
22 for a second.

23 (Discussion off the record.)

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

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1 Q. Mr. Freshwater, let me hand you what we
2 marked as Exhibit 8. I apologize, I should have
3 marked this before. This is another photograph of
4 your classroom; is that correct?

5 A. That would be correct, sir.

6 Q. And that's the same bulletin board we
7 were looking at before.

8 A. That would be correct, sir.

9 Q. And here there are these posters, the
10 Cross Club News; do you see that?

11 A. Yes.

12 Q. Or banners, whatever you want to call
13 them.

14 A. Yes.

15 Q. What are those? You tell me what they
16 are.

17 A. Students made these prior to -- before we
18 became FCA.

19 Q. And so you just kept these tacked onto
20 your bulletin board.

21 A. Yeah. It's the FCA room.

22 Q. Okay.

23 A. It's --

24 Q. I'm sorry.

1 A. That's okay. Go ahead.

2 Q. When did Cross Club become FCA?

3 A. I don't remember, sir.

4 Q. Before 2005? After 2005?

5 A. I don't remember, sir.

6 Q. Do you recall how long you had these
7 Cross Club News banners up on your bulletin board?

8 A. I don't remember, sir.

9 Q. Okay. They were there during the
10 2007-2008 school year in any event.

11 A. Yes.

12 Q. The top one here says "Cross Club News."
13 Do you know what the ones behind it said?

14 A. No, sir.

15 Q. But they were also Cross Club related
16 banners?

17 A. I don't know, sir.

18 MR. MANSFIELD: Okay. Why don't we go
19 ahead and break now.

20 (At 12:27 p.m. a lunch recess was taken
21 until 1:35 p.m.)

22 - - -

23

24

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Wednesday Afternoon Session,

October 14, 2009.

- - -

CROSS-EXAMINATION (continued)

By Mr. Mansfield:

Q. Mr. Freshwater, this morning we talked a little bit about the rally on the Square and, as I understand it, that same day there was an abortion van that was in Mount Vernon. Were you aware of that?

A. (Witness shakes head.)

Q. Have you come to learn that there was an abortion van in Mount Vernon that day that drove by the middle school?

A. Yeah, I became aware of it. Yes.

Q. Who told you that?

A. I think it was the Does.

Q. The Does told you.

A. Yeah, in a newspaper article.

Q. So they didn't tell you.

A. *The Columbus Dispatch*, Mount Vernon --

Q. Okay.

A. Through the Does.

Q. Did you see that abortion van near the

1 Square when the rally on the Square was going on?

2 A. No.

3 Q. Did you happen to see that abortion van
4 that day, on April 16th, 2008?

5 A. No.

6 Q. Did Mr. Daubenmire talk to you about the
7 fact that that abortion van was going to show up that
8 day?

9 A. No.

10 Q. Now, you're aware that at some point in
11 time the Does came to the school, actually in
12 December 2007, to talk to administrators about what
13 had happened to James in your science class, right?
14 You're aware of that.

15 A. It was a -- I'm aware of it now, yes.

16 Q. Right. You didn't know it at the time --

17 A. Right.

18 Q. -- but you're aware of it now.

19 A. Yes.

20 Q. And I assume you're aware now that the
21 Does had met with school administrators a few times
22 in between December '07 and April '08 let's say.

23 A. Yes.

24 Q. When the school district, when Mr. White

1 and others had conversations with you about the
2 religious displays in the classroom and the Bible on
3 your desk, you didn't know that the Does had talked
4 to anybody at the school at that point in time, did
5 you?

6 A. Again, you continue to say "religious
7 display." It was not a religious display, sir.

8 Q. Okay. The book covers and the Bibles in
9 your classroom, when the school administrators were
10 talking to you about those in April 2008, at that
11 point in time did you know that the Does had
12 complained about you and your teaching?

13 A. I learned -- you're saying the name Does?
14 Are you --

15 Q. Yes.

16 A. Are you asking me when I learned about
17 the Does?

18 Q. Yes.

19 A. Is that what you asked?

20 Q. Yeah.

21 A. I'm just trying to -- that would have
22 took place after April 22nd after I had a meeting
23 with Mr. White and they were going to put a monitor
24 in my class.

1 Q. Okay.

2 A. So that would be, I'll put it at April
3 22nd or later.

4 Q. So when all these allegations that were
5 being made against you were -- strike that.

6 When this issue about a Bible on your
7 desk became public, you had no understanding that the
8 Does had somehow complained to the school district
9 about anything.

10 A. That would be correct, yes.

11 Q. Everything becoming public about the
12 Bible on the desk and the troubles you were having
13 with the school district, that really had nothing to
14 do with the Does, correct?

15 A. Repeat that one. I'm not quite sure what
16 your question is on that.

17 Q. This whole issue about you having the
18 Bible on the desk and this coming into public light
19 and the fact that there was a rally on the Square
20 and, you know, your name appearing in the paper
21 complaining about the fact that the school district
22 was admonishing you for having a Bible on the desk,
23 all of that had nothing to do with the Does, correct?

24 A. I'm not certain of your question on that,

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1 sir. I didn't know the Does till after April 22nd.

2 Q. Right. And all these issues about the
3 Bible on the desk and the rally on the Square and all
4 these things all happened before you knew about the
5 Does, correct?

6 A. Yes.

7 Q. Okay.

8 A. I didn't have a name Doe.

9 Q. Right. So the fact that your name was
10 made public, the fact that this whole issue about the
11 Bible on the desk became a public issue, that had
12 nothing to do with the Does making a public statement
13 about that, correct?

14 A. I guess I'm confused on the question
15 here. I didn't know the name -- I didn't know it was
16 the Does.

17 Q. Right.

18 A. So I don't know how to answer that one.

19 Q. Let me ask it this way, in April of 2008
20 the Does never made any public statement regarding
21 anything related to you having Bibles in the
22 classroom or you burning a cross on James's arm,
23 correct?

24 A. You just added something new in there. I

1 didn't burn a cross. So you just added a whole
2 nother thing into that.

3 Q. I'll split it out.

4 A. Okay.

5 Q. Before, well, before you -- in April 2008
6 or any time up to that point the Does had never made
7 a public allegation about you having a Bible on your
8 desk in the classroom, correct?

9 MR. HAMILTON: What are you defining as
10 "public," Doug?

11 MR. MANSFIELD: Defining as what?

12 MR. HAMILTON: What are you defining as
13 "public"?

14 Q. Do you understand what a public statement
15 is? A statement made to the public. A statement
16 made to a newspaper. A statement made to anybody in
17 the public.

18 MR. HAMILTON: Or a statement made to a
19 school administrator.

20 A. They made a statement -- I don't know.
21 I'm very confused on that, sir.

22 Q. Okay.

23 A. I'm not . . .

24 Q. The first time the issue of a Bible being

1 on your desk or you being admonished by the school
2 district for a Bible on your desk or for the other
3 things we talked about, the first time that was made
4 public, in fact, was when there was the rally on the
5 Square, right?

6 A. Again, you're back to that "public"
7 again. I'm not -- you're going to have to --

8 Q. Okay. Were people in the community aware
9 about the allegation -- strike that.

10 Were people in the community aware that
11 the school district had been talking to you about
12 removing the Bible from your desk at any time before
13 the rally on the Square?

14 A. The people, no.

15 Q. Okay. And so the first time that issue
16 became public was at the rally on the Square.

17 A. About the Bible on the desk.

18 Q. Yes.

19 A. Becoming public.

20 Q. About that issue becoming public. The
21 fact that there was some issue with you and a Bible
22 on the desk with your employer, the school district,
23 the first time that became public was at the rally on
24 the Square.

1 A. Maybe something else -- maybe Mr. White
2 talked about it. I don't know. I mean, he . . .

3 Q. Okay.

4 MR. DESCHLER: Doug, I'm going to object
5 to the -- hold on a second, John -- the word you used
6 is "public." Okay, the April 14th letter sent by
7 Plaintiff's former attorney was deemed to be a public
8 record, so I don't know -- that was contained in
9 there. So I want to make sure we understand. You
10 mean speech to the public? I'm confused on that
11 issue.

12 MR. MANSFIELD: We'll get to that.

13 MR. DESCHLER: Okay.

14 MR. MANSFIELD: You know, I'm going to
15 object again. I can't have both of you guys
16 objecting. There's only one counsel permitted to
17 represent him and, Jason, I want the record to
18 reflect while you were objecting Mr. Hamilton was
19 whispering into Mr. Freshwater's ear. That's not a
20 proper way to do things. There are questions
21 pending. You can't talk to a witness when there's a
22 question pending.

23 So one of you has to decide who's
24 representing him at this deposition. We're not going

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1 to have objections from both of you. We can get the
2 magistrate on the line if you'd like, you know, she's
3 going to tell you you both can't object.

4 MR. DESCHLER: We're both representing
5 him in different capacities.

6 MR. MANSFIELD: It's one party.

7 MR. HAMILTON: Let's not mince words.
8 Let's just get the magistrate on the line then. I
9 mean, let's -- I don't want to argue with you over
10 these things. We're taking up valuable time. If it
11 would make you feel better to talk to the magistrate
12 about it, let's do that.

13 MR. MANSFIELD: Well, if it happens
14 again, we'll get the magistrate on the line.

15 Q. (By Mr. Mansfield) Mr. Freshwater, the
16 first time you were made aware of any issue about the
17 Bible on your desk was in April 2008, correct?

18 A. Well, April --

19 Q. April 17th.

20 MR. DESCHLER: I'm sorry. Can we go off
21 the record for a second.

22 (Discussion off the record.)

23 MR. MANSFIELD: Can you read my last
24 question back, please.

1 (Record read.)

2 A. April 7th.

3 Q. Right.

4 A. Yes.

5 Q. April 7th, 2008.

6 A. Yes.

7 Q. And up to that point, up to April 7th,
8 2008, obviously nobody in the public in Mount Vernon
9 or anywhere else knew about the Bible on the desk
10 issue, correct?

11 A. It was never a problem before April
12 7th.

13 Q. Right. So the answer to my question is
14 "yes"?

15 MR. HAMILTON: Can you -- I object. He
16 can't possibly know whether or not anybody in Mount
17 Vernon, what knowledge they had. He only has his
18 knowledge.

19 Q. Based on your knowledge, were you aware
20 of anybody in Mount Vernon being aware of that issue
21 up to or prior to April 7th, 2008?

22 A. I was not aware of any.

23 Q. Okay. The first time that you are aware
24 that the issue about the school board asking you to

1 remove religious displays from your classroom and the
2 school board asking you to remove the Bibles from
3 your classroom was the rally on the Square on April
4 16th, 2008, correct?

5 A. You'll have to reword that because I
6 stopped -- you said "religious displays," again.

7 Q. Listen to my question.

8 A. You're saying "religious displays." I
9 just kind of shut you down because it wasn't
10 religious displays.

11 Q. You may disagree with the religious
12 displays. The school is making allegations against
13 you that they were religious displays; would you
14 agree with me on that?

15 A. That is an allegation in this case.

16 Q. So the first time the allegation that you
17 had religious displays in the classroom and the
18 school board had asked you to remove them, and the
19 first time that the school board had asked you to
20 remove Bibles from your classroom, the first time
21 that either of those two issues became public was at
22 the rally on the Square on April 16th, 2008,
23 correct?

24 A. We're back with that word "public."

1 Q. I'm just asking for your understanding.

2 Whatever you --

3 A. From my understanding.

4 Q. Yeah.

5 A. Yes.

6 Q. Okay. Let's go back to December 6th,
7 2007. James Doe is a student in your class, correct?

8 A. Yes, he is.

9 Q. He's in your, it's eighth period science
10 class?

11 A. Yes.

12 Q. And that's the last period of the school
13 day; is that correct? Or am I wrong about that?

14 A. Was it the last period or the period
15 before? It's towards the end of the day, sir.

16 Q. Okay. And in that class, in your
17 classroom where James Doe was there on December
18 6th, 2007, you did an experiment with a Tesla coil,
19 correct?

20 A. That is correct.

21 Q. Tell me what a Tesla coil is.

22 A. It's a device that's used for
23 experiments.

24 Q. What kind of device is it?

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1 A. It's high voltage and -- I'm not sure. I
2 guess I'm not quite sure what you're after on that.

3 Q. Well, I want to know what your
4 understanding is of what the Tesla coil is.

5 A. But you didn't ask me when. Now my
6 understanding of it, or then?

7 Q. Okay.

8 A. That's -- I'm -- I need some clarity on
9 that, sir.

10 Q. Okay. When I ask these questions about
11 the Tesla coil, let's just make the time frame
12 December 2007, okay?

13 A. So my knowledge of 2007.

14 Q. What your knowledge was in December 2007.

15 A. Okay.

16 Q. What was your knowledge in December 2007
17 about what a Tesla coil is?

18 A. Everything that I had from -- on training
19 from another teacher from, his name is Jeff -- I'm
20 sorry, probably too fast.

21 Q. Jeff?

22 A. The on-training from another colleague,
23 Jeff George.

24 Q. My question is what was your

1 understanding of what a Tesla coil was back in
2 December 2007?

3 A. A device that I used for doing
4 experiments with.

5 Q. You understood it was a device that put
6 out an electrical output, correct?

7 A. Yes.

8 Q. And you understood, you testified just a
9 minute ago that it put out high voltage, correct?

10 A. That -- I understand that now, yes.

11 Q. You didn't understand that in December
12 2007.

13 A. I did not know how high it was.

14 Q. But you understood in December 2007 it
15 put out high voltage, correct?

16 A. When I was trained by Jeff George, he
17 might have said something then.

18 Q. Okay. What training did Jeff George give
19 you about the use of the Tesla coil?

20 A. Twenty-one years ago. I have to say I
21 don't remember all of the training. What I used in
22 my room -- what he had showed me then is what I used
23 in my room.

24 Q. What did he show you, then, 21 years ago?

1 A. The vacuum tubes is what I'm trying to
2 pull up out of my brain here, the vacuum tubes with
3 gases in them, charging those up.

4 Q. So he showed you how to apply the Tesla
5 coil to those vacuum tubes to charge those tubes?

6 A. Yes.

7 Q. And he showed you how to operate the
8 Tesla coil?

9 A. Yeah.

10 Q. He showed you how to turn it on?

11 A. Twenty-one years ago. I would expect so,
12 yes.

13 Q. And he showed you that it had a rheostat
14 on the side of it?

15 A. Yeah.

16 Q. And that rheostat would increase or
17 decrease the power output of the Tesla coil, correct?

18 A. That would be correct, yeah.

19 Q. Okay. And did he give you any training
20 about what you were not supposed to do with the Tesla
21 coil?

22 A. No. I have a hard time remembering that.
23 I mean, I'm . . .

24 Q. Where is Jeff George today?

1 A. I couldn't tell you.

2 Q. Do you know how long ago he left teaching
3 in Mount Vernon schools?

4 A. Ten years ago.

5 Q. Is he still in Mount Vernon, do you know?

6 A. I don't know.

7 Q. Okay. Did Mr. George actually physically
8 hand you and give you the Tesla coil for your
9 classroom?

10 A. I don't know, sir.

11 Q. Do you remember where it came from?

12 A. School equipment.

13 Q. How did you get the Tesla coil that
14 you've had in your classroom?

15 A. School -- school equipment.

16 Q. Tell me how you got it. Who gave it to
17 you? Where did you get it?

18 A. They're kept in the lab room or kept in
19 the classroom.

20 Q. Was it in your --

21 A. It's a part of the science equipment.
22 It's with all the other experiments that are used.

23 Q. When you started 21 years ago, was the
24 Tesla coil already into your science classroom?

1 A. There was a couple. I don't recall if
2 there was a couple then or not so I don't know. I
3 don't know if there was just one then or two or three
4 then. I don't know back 21 years ago how many there
5 was.

6 Q. But you remember there being at least one
7 Tesla coil in your science classroom on the very
8 first day you started teaching in Mount Vernon City
9 Schools.

10 A. Oh, no. No, I don't remember one being
11 in the classroom.

12 Q. Okay.

13 A. It could have been in the lab. Could
14 have been in Mr. George's room. I'm not sure.

15 Q. So at some point in time you got at least
16 one, maybe more Tesla coils, into your science
17 classroom.

18 A. I didn't do the purchasing and orders.

19 Q. That wasn't my question, sir. You need
20 to listen to my question.

21 A. Okay.

22 Q. At some point in time you got a Tesla
23 coil into your classroom.

24 A. Did I use one? Are you asking did I use

1 a Tesla coil in my classroom? Yeah.

2 Q. Okay. And did you over the 21 years you
3 taught there, did you keep the Tesla coil in your
4 classroom at all times?

5 A. If there was only one, it just moved
6 around.

7 Q. Okay. That's my question.

8 A. Yeah.

9 Q. The Tesla coil, was that just for your
10 classroom or was that part of the general equipment
11 that you could go and get and bring back?

12 A. There you go. General equipment.

13 Q. So when you wanted to use the Tesla coil
14 in your classroom for science experiments, you would
15 have to go to the lab or wherever the Tesla coil was
16 stored and pick it up and bring it back to your
17 classroom.

18 A. Yeah. Or like I say, another teacher
19 could be using it.

20 Q. Right.

21 A. Maybe to another classroom, to the lab.

22 Q. But you did not maintain a Tesla coil in
23 your classroom every day.

24 A. No.